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Case No. 87-471

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1987

ROBERT J. HEILGEIST,

Petitioner,

v.

SUPREME COURT OF WISCONSIN,

Respondent.

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF WISCONSIN

BRIEF OF RESPONDENT, SUPREME COURT OF WISCONSIN, IN OPPOSITION TO GRANTING OF PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF WISCONSIN; AND SUPPLEMENTAL APPENDIX

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The respondent Supreme Court of Wisconsin shall hereinafter be called "respondent Court"; the petitioner Robert J. Heilgeist, "Heilgeist"; and the "Petition for Writ of Certiorari to the

Supreme Court of Wisconsin" filed herein, "Petition."

QUESTION PRESENTED FOR REVIEW

Heilgeist, under the heading, "QUESTION PRESENTED," represents that such question is: "Whether the exercise by the supreme court of a State of extra-territorial discipline of an attorney residing, licensed and practicing law exclusively in a neighboring State, contravenes Art. IV, Sec. 2 and Amend. XIV, Sec. 1, of the Federal Constitution?"

The respondent Court submits that such question is not, as required by Rule 21 of the Revised Rules of this Court, "expressed in the terms and circumstances of the case but without unnecessary detail" (emphasis supplied), because it omits, for whatever the

reason, certain highly significant and necessary details of the circumstances here involved, and includes a detail not "necessary," and of dubious existence, namely, an assertion that the attorney in question practiced law "exclusively" in the "neighboring State." The respondent Court further submits that the issue presented for review herein, should this Court grant certiorari, so stated as to present the above-mentioned details, and elide the unnecessary detail above-noted, is this: Whether the exercise by the supreme court of a State of extra-territorial discipline of an attorney residing, licensed, and practicing law in a neighboring state contravenes Art. IV, Sec. 2 and Amend. XIV, Sec. 1, of the Federal Constitution, in circumstances where such attorney has been found by such Court to have purported to be

authorized and qualified to practice law in the disciplining state, knowing his license to practice law therein was suspended; and where such attorney, as a result of such action by the disciplining state, did not necessarily face any "reciprocal discipline" by the state of his residence?

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STATEMENT OF THE CASE

This statement is presented because of the unequivocal assertion in Heilgeist's "STATEMENT OF FACTS" that,

> Because of the action of the Wisconsin Supreme Court in suspending petitioner, he faces reciprocal discipline by the Supreme Court of Illinois pursuant to Supreme Court Rule 763 which in pertinent part provides:
>
> > 'If an attorney, licensed to practice law in this state and another state, is disciplined in the foreign state, he may be subjected to the same discipline in this state, to run concurrently with the discipline in the foreign state, upon proof of the order of the foreign state imposing the discipline.'

(Emphasis supplied; Petition, p. 8.) It is also necessitated by the omission of certain important facts from such

"Statement of Facts," and another defect in such statement described infra.

It is submitted that the above-mentioned unequivocal assertion, in the light of the court rule referred to therein, is so unwarranted and unjustified that it cannot and does not qualify as a "fact" here involved. The use of the word "may" in such rule is, it is submitted, clearly permissive, under the well-established principle of statutory construction that, "As a general rule the word 'may,' when used in a statute, is permissive only,[90] and operates to confer discretion[91], . . ." (Emphasis supplied; footnotes omitted; 82 C.J.S. Statutes § 380(a) (1953).) See also, as to "may" being, under the general principle, permissive only, United States v. Bowden (hereinafter "Bowden"), 182 F.2d 251, 252 (10th Cir.

1950); Lansdown v. Faris (hereinafter "Faris"), 66 F.2d 939, 941 (8th Cir. 1933); Terre Haute & I. R. Co. v. Indiana ex rel. Ketcham, 194 U.S. 579, 588 (1904). See also, as to "may," under the general principle, operating to confer discretion, Bowden, 182 F.2d at 252; Faris, 66 F.2d at 941; United States v. Cook, 432 F.2d 1093, 1098 (7th Cir. 1980).

Bowden, cited supra, states that, "The use of the word 'may' in a statute will be construed as permissive and to vest discretionary power, unless the context of the statute clearly indicates a purpose to use it in a mandatory sense.[1]" (Emphasis supplied; footnote omitted; 182 F.2d at 252.) It is submitted that the pertinent part of Rule 763 of the Illinois Supreme Court Rules set forth at p. 8, Petition, containing

the words "he may be subjected to the same discipline in this state" (emphasis supplied) is plainly not so worded as to indicate, clearly or otherwise, a purpose to employ "may," as so used therein, in a mandatory sense. It therefore follows that the assertion in question that Heilgeist "faces reciprocal discipline" under such rule, "Because of the action of the Wisconsin Supreme Court in suspending" him is manifestly not fact, because there is no certainty that the Illinois Supreme Court will exercise the discretion it clearly has under its Rule 763 to impose reciprocal discipline on Heilgeist.

In addition to presenting the non-fact above discussed as if it were undoubtedly a fact, Heilgeist's "Statement of Facts" omits several facts of importance, and also presents as fact

a matter which would appear to have no support in the record, and is in any event not a fact "material to the consideration" of the question presented herein. See Rule 21.1.(g), Supreme Court Rules. Such matter is that "The investigators persuaded the Wetzels to break their retainer agreement with petitioner on the ground that petitioner was 'unlawfully practicing law in Wisconsin and that petitioner could not legally represent Anthony in the personal injury claim" (Petition at 5). One of the omitted facts of importance is that the letter of April 9, 1985, which Heilgeist sent to "Wilmot Union Community H.S. Attn.: Principal or Superintendant [sic] Wilmot Wis."[1] (Supp. App. 121)

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[1]It should perhaps be noted that the petition twice erroneously refers to such letter as being sent only to "the high school principal." See Petition, pp. 4, 6.

states that, "My clients have retained me to file suit against you for the damages they sustained on the above date." (Emphasis supplied.) The second of the above-mentioned omitted facts of importance is that what such letter described as Heilgeist's "Statutory Notice of Attorney's Lien" commenced with the words, "YOU ARE HEREBY NOTIFIED that Anthony Wentzel has placed in my hands, as attorney, for suit or collection, a claim, demand, or cause of action against you . . ." (emphasis supplied; Supp. App. 123).

Still another defect in Heilgeist's "Statement of Facts," which requires corrective comment here, is its attempt to make it appear that a finding of the Referee here involved was grounded in part on the fact that the above-mentioned letter of Heilgeist "purportedly

threatened a lawsuit if petitioner 'did not hear from the school or its insurance carrier within a reasonable time.' (Id.[2])" (Emphasis supplied; Petition, pp. 6, 7.) In truth, the Referee clearly and logically did not view such letter as "purportedly" threatening a lawsuit, but as actually threatening one (see Supp. App. 113-14, and the unqualified references thereat to "threatened lawsuit"), in the light of its opening words, "My clients have retained me to file suit against you . . . ." (Supp. App. 121.)

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[2]Here "id." referred to p. 4 of the respondent Court's per curiam decision in Heilgeist's disciplinary proceedings. See p. 4 of such decision, annexed to the Petition as an apparent appendix thereto, though not so designated and with no appendix page-numbering.

SUMMARY OF ARGUMENT

The argument presented infra may be summarized as follows: Heilgeist's sole argument made herein, its substance being that the Wisconsin disciplinary action here involved violates Heilgeist's Federal constitutional right to practice law in Illinois, is devoid of merit, because it is based on misconceptions of Heilgeist as to his Federal constitutional rights, and because the sub-arguments embraced in such argument are meritless.

Such misconceptions are that this Court has held that the practice of law in a lawyer's state of residence is a privilege under the Privileges and Immunities Clause; and that to engage in such practice is a "fundamental right," i.e., a right guaranteed by the United States Constitution.

The first of such sub-arguments, namely, that the disciplinary decision of the respondent Court here involved produced an "automatic" reciprocal suspension of Heilgeist's license to practice in Illinois, thus infringing on his "fundamental right to practice his profession and earn his livelihood in his own state" (Petition at 9) is meritless because under the applicable Illinois Supreme Court Rule, reciprocal discipline is discretionary, not "automatic," i.e., mandatory. The second of such sub-arguments is that the Wisconsin disciplinary action in question constitutes discrimination in that Heilgeist "is being disciplined, extraterritorially from practicing in Wisconsin so that his legal services in Illinois could not be available to a Wisconsin resident, whose representation did not necessarily

require a Wisconsin lawyer." (Petition at 12.) Such sub-argument is meritless because the Wisconsin Supreme Court rule under which such discipline was imposed is clearly non-discriminatory, and was applied against Heilgeist in non-discriminatory fashion. As for Heilgeist's third sub-argument, it is an "insufficiency of evidence" contention improperly made in a constitutional argument; and even were that not so, such sub-argument is rife with inaccuracy, for reasons discussed.

ARGUMENT

THE DISCIPLINARY ACTION OF THE RESPONDENT COURT DOES NOT INFRINGE UPON HEILGEIST'S SO-CALLED "FUNDAMENTAL RIGHT" TO PRACTICE LAW IN ILLINOIS, OR CONTRAVENE THE "PRIVILEGES AND IMMUNITIES" CLAUSES OF THE UNITED STATES CONSTITUTION.

The Petition, pp. 8-15, takes a position contra the above-stated argu-

ment. It does so in what appear to be three sub-arguments, regrettably not clearly and discretely so identified in Heilgeist's argument. Before addressing such sub-arguments, however, it is submitted that Heilgeist obviously entertains a serious misconception as to what Supreme Court of New Hampshire v. Piper (hereinafter "Piper"), 470 U.S. 274 (1985), holds. The Petition, p. 10, asserts that Piper "ruled that the practice of law was a protectable privilege under that Article [Art. IV, sec. 2, United States Constitution]." (Bracketed materials supplied.) Piper clearly does not so hold. Instead, it holds that, "The non-resident's interest in practicing law is a 'privilege' protected by the Clause [Art. IV, sec. 2,

United States Constitution]."[3] [Bracketed material and emphasis supplied; 470 U.S. at 288.]

At this juncture, it should further be noted that Heilgeist apparently believes he has a "'fundamental right' to practice law in his native state" which has been infringed upon by the Wisconsin disciplinary action in question. See Petition, pp. 8, 9. But if Heilgeist, as

---

[3]It is true that Piper, in less precise language, also states that, "We . . . conclude that the right to practice law is protected by the Privileges and Immunities Clause.[16]" (Footnote omitted; 470 U.S. at 283.) But in view of the rationale immediately preceding such statement, and the language of such Clause, it is plain that what this Court meant by "right to practice law" as used in such statement was the right of a non-resident of a state to practice law therein, with this Court also describing such right, in its above-quoted holding, as "The non-resident's interest in practicing law" and as "the opportunity [of a non-resident] to practice law." (Bracketed material supplied; 470 U.S. at 281.)

he apparently does, conceives of such right as afforded by the United States Constitution, he is clearly in error. While this Court has held that, "The practice of law is not a matter of grace, but of right for one who is qualified by learning and his moral character" (emphasis supplied), Baird v. State Bar of Arizona, 401 U.S. 1, 8 (1971), it has never held that the right to practice law is of constitutional stature; and Federal case law has made it plain that it is not. See Matter of Roberts, 682 F.2d 105, 108 (n.3) (3rd Cir. 1982); Ricci v. State Bd. of Law Examiners, 427 F. Supp. 611, 617 (U.S.D.C., E.D. Pennsylvania 1971). As well stated in the latter case, ". . . the right to practice law in a state court is not a privilege conferred upon a citizen by the United States Constitution or federal

statutes. Furthermore, there is no inherent right to practice law in the state courts until the individual seeking the right to practice has established his or her professional and moral qualifications as proscribed [obviously, "prescribed" was meant] by the state. It is only then that the right to practice law in that state arises." (Bracketed material and emphasis supplied; 427 F. Supp. at 617.) And, of course, even if Heilgeist possesses a "right" to practice law in his state of residence (Illinois), non-constitutional in character, it manifestly would not encompass a right to violate court rules of another state relative to purporting to be authorized and qualified to practice law in such state.

(a)

The first of Heilgeist's sub-arguments would appear to be this: that "The action of the Supreme Court of Wisconsin in suspending the petitioner indefinitely from practicing law in that state--even though the offense charged against him was not the practice of law in Wisconsin--has the automatic consequence of a suspension to practice in Illinois" (emphasis supplied; Petition, p. 9); and that consequently, ". . . the decision of the Wisconsin Supreme Court is an infringement on Heilgeist's fundamental right to practice his profession and earn his livelihood in his own state." (Id.)

This sub-argument, it is submitted, is palpably devoid of merit, because, as shown in the Statement of the Case, supra, it is inaccurate, and indeed

absurd, to assert that the Wisconsin disciplinary action against Heilgeist here involved "has the automatic consequence of a suspension to practice in Illinois." As shown above, the applicable Illinois Supreme Court rule as to reciprocal discipline leaves it to the discretion of the Illinois Supreme Court as to whether or not such discipline shall be imposed. Significantly, it should be added, the Petition makes no allegation that reciprocal discipline has been imposed on Heilgeist as a result of the Wisconsin discipline in question.

It is clear, then, that Heilgeist's "reciprocal discipline" sub-argument is meritless, if only because it is based on a non-fact. Assuming, however, for purposes of this sub-argument only, that the imposition of the Wisconsin discipline on Heilgeist necessitated the

imposition upon him of reciprocal discipline by Illinois, under Illinois law, the latter imposition would be a mere consequence of the former; and, if arguably an unconstitutional consequence (though it clearly would not be, since, as above shown, Heilgeist's right to practice law in Illinois is not a constitutional right), Heilgeist's quarrel would not be with the respondent Court, but with the Supreme Court of Illinois, and its rule requiring (under the assumption above made) the imposition of reciprocal discipline.

(b)

The second sub-argument of Heilgeist would appear to be summed up in his argument that,

> . . . The case at bar presents an obverse form of discrimination in that petitioner is being disciplined, extra-

> territorially from practicing in Wisconsin so that his legal services in Illinois could not be available to a Wisconsin resident, whose representation did not necessarily require a Wisconsin lawyer.
>
> In these circumstances, the Wisconsin disciplinary action is nothing but a transparent effort to prevent or discourage Wisconsin residents from engaging an Illinois lawyer, if they wished, to perform legal services which would not necessarily involve the practice of law in Wisconsin.

(Petition, pp. 12, 13.)

Such sub-argument, it is submitted, is clearly meritless. There is, it is submitted, no discrimination involved in the context of the disciplinary proceeding here in question, i.e., in the situation where a lawyer in one state (here, Illinois), whose license has been suspended in another state (here, Wisconsin), chooses to purport that he is authorized and qualified to practice law

in Wisconsin, knowing that his license to do so has been suspended. Such conduct is clearly a violation of that portion of SCR 10.03(4) which reads, "No individual other than an enrolled active member of the state bar may . . . in any manner purport to be authorized or qualified to practice law." Plainly, Heilgeist can make no valid claim that a lawyer practicing law in a state other than Wisconsin enjoys, by virtue of such practice, a constitutional privilege to violate with impunity a rule of the respondent Court which, manifestly in the public interest, forbids anyone, "other than an enrolled member of the state bar to in any manner . . . purport to be authorized or qualified to practice law" (emphasis supplied) in Wisconsin. Obviously, such rule is so worded as to be non-discriminatory; and there is

nothing discriminatory in an enforcement thereof against an out-of-state lawyer who chooses to violate it. As pointed out in Piper, ". . . a nonresident lawyer may be disciplined for unethical conduct" (470 U.S. at 286), and he or she is subject to discipline "in the same manner" in which resident bar members are disciplined. See Piper, 470 U.S. at 286 (n.20).

Heilgeist seeks to bolster his specious second sub-argument by imputing to the respondent Court a shoddy motive for its enforcement against him of the non-discriminatory SCR above quoted, namely, "to prevent or discourage Wisconsin residents from engaging an Illinois lawyer, if they wished, to perform legal services which would not necessarily involve the practice of law in Wisconsin." (Petition, p. 13.) Such

imputation, it is submitted, so unfairly attributing to the respondent Court what this Court has called "economic protectionism" (Piper, 480 U.S. at 285 (n.18)), is both completely unwarranted and absurd, and, it is submitted, merits no serious consideration by this Court.

In connection with his second sub-argument, Heilgeist fallaciously contends as follows:

> The issue presented by the case at bar is not an interference with the ability of Wisconsin to regulate the practice of law within its own state. The imposition of its disciplinary rules upon petitioner, however, and his voluntary removal from Wisconsin practice since 1982 offends his Illinois privilege of practicing law and his immunity from Wisconsin discipline.

(Petition, p. 13.)

Such conclusory assertions, unsupported by specifics, are both plainly in error. If Heilgeist had his way, he

would successfully invoke herein the Federal judicial power to produce a marked interference with "the ability of Wisconsin to regulate the practice of law within its own state," by conferring on anyone practicing law in another state, who had his license suspended in Wisconsin and knew of such suspension, the privilege of purporting to be authorized and qualified to practice law in Wisconsin: a privilege that would amount to a license to violate Wisconsin law. Such privilege, it is submitted, is not provided to Heilgeist, or to anyone else, by the United States Constitution, no provision of which creates a privileged sanctuary within which a lawyer residing and practicing law in one state may, with impunity, violate the laws of another state governing the

practice or purported practice of law therein.

(c)

Heilgeist's third sub-argument is also meritless. It is made in the penultimate paragraph of the Petition, which reads:

> While agreeing with the Referee that Heilgeist's conduct in handling the Wetzel [sic] matter 'did not constitute the practice of law in Wisconsin' (App. I, 3), the Court inexplicably accepts the finding that Heilgeist's letter to the Wisconsin principal somehow 'implied that Mr. Heilgeist was authorized and qualified to commence the threatened action in Wisconsin'. (id). Apparently the basis for this supposition was that Mr. Heilgeist's letterhead showing his Illinois law office also showed a Wisconsin address--(which was Mr. Heilgeist's residence and home telephone number. On such tenuous basis did the Supreme Court of Wisconsin see fit to

> enter its judgment of 'indefinite suspension'.

(Emphasis supplied; Petition, pp. 14, 15.)

This argument is, of course, readily recognizable as no more than a thinly veiled "sufficiency of the evidence" argument, attacking as inadequate the basis for what Heilgeist calls the respondent Court's "judgment of 'indefinite suspension.'" Such argument, it is submitted, has no proper place in, and is alien to, Heilgeist's constitutional argument herein, which is the sole argument he presents. But even if it could with propriety be made herein, such sub-argument is rife with grave inaccuracies. First, it cannot be accurately said that the respondent Court "inexplicably" accepted the finding that Heilgeist's above-mentioned letter, in the language of such Court "implied that

Mr. Heilgeist was authorized and qualified to commence the threatened action in Wisconsin." (App. I, 5.) The respondent Court, in adopting such finding, carefully spelled out the two bases on which it was predicated (id.), and clearly must be viewed as having tacitly approved such bases as sound, since it obviously would not have adopted such finding had it not found merit in the bases which it recognized as underlying the finding. Accordingly, the respondent Court's acceptance of such finding was not "inexplicable," but explicated by its tacit acceptance of the bases therefor, which it described.

A further failing in Heilgeist's third sub-argument is what can only be termed the disingenuous attempt in the Petition, pp. 14, 15, shown supra, to make it appear that the only basis for

the finding that Heilgeist's above-mentioned letter implied that he "was authorized and qualified to commence the threatened action in Wisconsin" was "that Mr. Heilgeist's letterhead showing his Illinois law office also showed a Wisconsin address--(which was Mr. Heilgeist's residence and home telephone number)." (Petition, pp. 14, 15.) As the decision of the respondent Court clearly shows, however (App. I, 5), and as the Referee's Findings of Fact and Recommendations also show (Supp. App. 113, 114), there were <u>two</u> bases for such finding: the Wisconsin address and telephone number appearing in the letterhead of Heilgeist's above-mentioned letter (Supp. App. 121), and the statement in such letter, "In that case, my next notice to you will be a lawsuit." (Supp. App. 122.) Indeed, there were two further

bases for such finding, unmentioned by either the Referee or the respondent Court: first, the opening words of Heilgeist's above-mentioned letter, namely, "My clients have retained me to file suit against you . . ." (emphasis supplied; Supp. App. 121); and second, the statement in the lien notice above mentioned that: "YOU ARE HEREBY NOTIFIED that Anthony Wentzel has placed in my hands, as attorney, for suit or collection, a claim, demand, or cause of action against you . . ." (emphasis supplied; Supp. App. 123).

CONCLUSION

For the reason above shown, the Petition should be denied.

Respectfully submitted,

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SUPPLEMENTAL APPENDIX OF RESPONDENT,
SUPREME COURT OF WISCONSIN

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STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:

Case No: 85-2014-D

ROBERT J. HEILGEIST,
Attorney at Law,

Respondent.

FINDINGS OF FACT AND RECOMMENDATIONS

The above-captioned matter was brought on for hearing on July 15, 1986. Attorney James J. Winiarski appeared as counsel for the Board of Attorneys Professional Responsibility. Attorney Robert J. Heilgeist appeared pro se. The proceedings were held before William G. Bunk, Referee.

The proceedings took place at the Kenosha County Courthouse.

Theretofore the Board of Attorneys Professional Responsibility had served and filed a Complaint and an Amended

Complaint requesting discipline, and the Respondent, Mr. Heilgeist, had responded, denying the allegations of the Amended Complaint.

The Amended Complaint contained five separate claims, denominated claims for relief, some of which were related and dependent upon others. Those claims are synopsized as follows:

In the First Claim it is alleged that Mr. Heilgeist, on April 1, 1985, during a suspension of his law license which commenced on November 19, 1984, engaged in the practice of law contrary to SCR 22.26(2), and practiced law in a jurisdiction where to do so would have been a violation of the regulations of the profession in that jurisdiction contrary to SCR 20.18(2). It is also alleged that Mr. Heilgeist, contrary to SCR 10.03(4), practiced law in the State

of Wisconsin and/or in some manner purported to be authorized or qualified to practice law in Wisconsin during the period of the suspension that commenced on November 19, 1984.

In the Second Claim Mr. Heilgeist is alleged to have engaged in conduct involving dishonesty, fraud, deceit and misrepresentation in violation of SCR 20.04(4) in that he stated to Referee Regez and the Court in letters of April 20, 1985, and May 2, 1985, that he had not been practicing law in the State of Wisconsin and had not done so since October 1982.

In the Third Claim Mr. Heilgeist is alleged to have violated SCR 22.26(4)(a) in that he allegedly failed to file with the administrator of the Board of Attorneys Professional Responsibility, within twenty-five (25) days after the

suspension which commenced on August 1, 1985, an affidavit showing full compliance with the July 9, 1985, order of suspension and with the rules and procedures.

In the Fourth Claim Mr. Heilgeist is alleged to have violated SCR 22.26(1)(a)(1) in that he failed to notify by certified mail before August 1, 1985, the effective date of a suspension, all clients then being represented by him in pending matters, of the fact of his suspension and of his consequent inability to act as an attorney for said clients after the effective date of said suspension.

In the Fifth Claim Mr. Heilgeist is alleged to have violated the Wisconsin Supreme Court Suspension Order dated July 9, 1985, in that he failed to pay $857.88 in costs as required therein and

also failed to submit any evidence of his inability to pay the same within the time specified in said Supreme Court order.

The ultimate request of the Complaint was that Mr. Heilgeist be properly disciplined by the Court in such manner as is just and proper.

Having heard all of the testimony I do find as follows:

FINDINGS OF FACT

Mr. Robert J. Heilgeist, presently of 1317 Cedar Lake Road, Lake Villa, Illinois 60046, was licensed by the State of Illinois to practice law in that state in the year 1955.

Mr. Heilgeist was licensed to practice law in the State of Wisconsin on July 18, 1979, while still licensed in Illinois.

In November of 1983, the Wisconsin

Court in disciplinary Case 83611D publicly reprimanded him for having commenced a meritless libel and malpractice action against another attorney.

Therefore Mr. Heilgeist failed to file with the Board of Attorneys Professional Competence the required evidence of attendance at fifteen (15) hours of approved continuing legal education in satisfaction of the 1983 Wisconsin mandatory continuing education requirements.

On May 16, 1984, a notice of noncompliance with those educational requirements was served by certified mail upon Mr. Heilgeist at 12012-336 Avenue, Twin Lakes, Wisconsin 53181, by Erica Moeser, Director of the Attorneys Board of Professional Competence. This notice of noncompliance addressed to Mr. Heilgeist advised that he would be

automatically suspended if he failed to cure the defect in satisfying the educational requirements within six (6) months of May 16, 1984.

The May 16, 1984, notice of non-compliance was sent to the last address that had been furnished to the State Bar of Wisconsin by Mr. Heilgeist. The notice was returned to the Board as unclaimed and was stamped as received by the Attorneys Board of Professional Competence on June 7, 1984.

Thereafter on October 26, 1984, Erica Moeser sent an additional notice addressed to Robert J. Heilgeist at 1317 Cedar Lake Road, Lake Villa, Illinois 60046 by certified mail. This notice advised Mr. Heilgeist that compliance with the 1983 educational requirements was required no later than November 16, 1984. It also advised that failure to

comply would result in the automatic suspension of his Wisconsin license to practice law. It also reminded Mr. Heilgeist of the May 16, 1984, notice.

This notice was returned to the Board of Attorneys Professional Competence as unclaimed. It was stamped by the Board as having been returned to the Board on November 30, 1984.

On November 19, 1984, the Board of Attorneys Professional Competence sent by certified mail a notice of suspension to Mr. Heilgeist at the Lake Villa, Illinois, address. The notice advised Mr. Heilgeist that his suspension for failure to satisfy the 1983 mandatory educational requirements became effective on November 16, 1984, at the close of the business day. This notice of suspension also advised Mr. Heilgeist that he was prohibited from practicing law in the

State of Wisconsin, until such time as he was reinstated.

In a subsequent disciplinary matter, Case 85-0261-D, the Wisconsin Court ordered that the Wisconsin law license of Mr. Heilgeist be suspended for ninety (90) days, commencing August 1, 1985. This order was filed July 9, 1985. In this Case 85-0261-D, the Court further ordered as follows:

> IT IS FURTHER ORDERED that within 60 days of the date of this order Robert J. Heilgeist pay to the Board of Attorneys Professional Responsibility the costs of this disciplinary proceeding, provided that if the costs are not paid within the time specified and absent a showing by Attorney Heilgeist of his inability to pay those costs within that time, the license of Attorney Robert J. Heilgeist to practice law in Wisconsin shall be suspended until further order of the court.
>
> IT IS FURTHER ORDERED that Robert J. Heilgeist comply with the provisions of SCR 22.26 concerning the requirements of

> a person whose license to practice law in Wisconsin has been suspended.

Mr. Heilgeist neither paid the aforesaid costs in Case 85-0261-D within the time provided in the Court's order, nor did he show to the Court an inability to pay within that time.

Mr. Heilgeist failed to file the affidavit required by SCR 22.26(4) within twenty-five (25) days after the date of the commencement of the suspension of August 1, 1985, as required by the Court's order of July 9, 1985.

On April 1, 1985, one Anthony Wentzel, then a resident of Rural Route, Bassett, Wisconsin, sought the legal services of Attorney Heilgeist relative to an injury he had received at the Wilmot Union Community High School at Wilmot, Wisconsin, on September 14, 1981, or September 14, 1982.

Anthony Wentzel and his mother, Ann Wentzel, went directly to the Lake Villa, Illinois, law offices of Attorney Heilgeist and met with Dolores C. Pavelski, the secretary of Mr. Heilgeist. Anthony Wentzel signed a retainer contract. See attached Exhibit C which is incorporated hereat by reference for purposes of clarification. A week or two later the Wentzels met with Mr. Heilgeist at his law offices in Lake Villa, Illinois. He informed them that any litigation in Wisconsin would be handled by a Wisconsin lawyer.

By letter (marked Exhibit C and attached hereto) dated April 9, 1985, Robert J. Heilgeist wrote to Wilmot Union Community High School concerning a September 14, 1981, occurrence. The

letter enclosed a notice of lien, marked Exhibit D and attached hereto, which set forth on its face that the lien was given under the Illinois laws of 1963.

No evidence was introduced of any acts performed in the Wentzel matter by Mr. Heilgeist while Mr. Heilgeist was in Wisconsin.

Prior to the commencement of these proceedings neither of the Wentzels was ever advised nor did they know that Mr. Heilgeist had ever been licensed in the State of Wisconsin.

The Wilmot School District forwarded Exhibits B, C, and D to its liability insurer, General Casualty Company of Wisconsin. The said insurer contacted its defense firm in Kenosha, Wisconsin. That firm advised the insurer of the fact that Mr. Heilgeist had been suspended from practice in Wisconsin and suggested

that the insurer contact Mr. Gerald Sternberg, Director of the Board of Attorneys Professional Responsibility. Contact was thereafter made by the insurer and copies of Exhibits B, C, and D were furnished to Mr. Sternberg by General Casualty Company of Wisconsin. Mr. Sternberg thereafter initiated an investigation that culminated in these proceedings.

AS TO THE FIRST CLAIM

The conduct of Mr. Heilgeist in the Wentzel matter constituted the practice of law, but did not constitute the practice of law in Wisconsin. His conduct did not violate SCR 22.26(2). SCR 22.26(2) was not meant to deny an attorney licensed to practice in Illinois the right to practice in Illinois while suspended in the State of Wisconsin.

Neither did the conduct of Mr. Heilgeist in the Wentzel matter violate SCR 20.18(2).

Based upon the entire record, the conduct of Mr. Heilgeist in the Wentzel matter did violate SCR 10.03(4) in that Mr. Heilgeist purported to be authorized and qualified to practice law in the State of Wisconsin while suspended there. Exhibit C clearly implies that Mr. Heilgeist was authorized and qualified to commence the threatened lawsuit in Wisconsin. Exhibit C states in pertinent part: "In that case, my next notice to you will be a lawsuit."

That language coupled with the Wisconsin address and telephone number leaves me with no other conclusion than that Mr. Heilgeist purported to be qualified and authorized to commence the threatened lawsuit in Wisconsin.

AS TO THE SECOND CLAIM

There is no evidence that supports the allegations that Mr. Heilgeist was dishonest, fraudulent or deceitful in the April 20, 1985 and May 2, 1985 letters to Referee Regez and the Court wherein he indicated that he had not been practicing law in Wisconsin. Accordingly the Respondent did not violate SCR 20.04(4).

AS TO THE THIRD CLAIM

The Respondent violated SCR 22.26(4)(a) when he failed to follow the requirements of the July 9, 1985, Order of the Wisconsin Supreme Court. The Respondent failed to file with the Administrator of the Board of Attorneys Professional Responsibility the required affidavit showing full compliance with the provisions of that Order and with the rules and procedures.

AS TO THE FOURTH CLAIM

No evidence was introduced that the Respondent had any clients in his Wisconsin practice to whom notice was required to be given. There is no violation of SCR 22.26(1)(a) as alleged in the Fourth Claim.

AS TO THE FIFTH CLAIM

The Respondent violated the Wisconsin Supreme Court Order dated July 9, 1985, in Case 85-0261-D in that he did not pay $857.88 in costs or show his inability to pay the same within sixty days of August 1, 1985.

RECOMMENDATIONS

The cumulative misconduct of Mr. Heilgeist is taken into consideration in

making these recommendations. It is recommended that Robert J. Heilgeist be suspended from the practice of law for a period of six (6) months. That suspension should commence immediately after Mr. Heilgeist has satisfied all of the orders, directives and requirements for reinstatement of the Board of Attorneys Professional Competence and the Order of the Wisconsin Supreme Court filed July 9, 1985.

It is also recommended that Mr. Heilgeist be required to pay the costs of these proceedings before he is again licensed to practice law in the State of Wisconsin unless he can show, to the satisfaction of the Court that he is otherwise qualified and unable to pay said costs.

DATED this 30 day of October, 1986.

William G. Bunk
William G. Bunk, Referee

Date 4-1-85

RETAINER CONTRACT

I hereby employ ROBERT J. HEILGEIST as my attorney to represent me in a claim for damages against persons responsible on account of injuries suffered by myself on 9/14/82 and agree to pay a sum equal to one third plus costs of any amount recovered. NO CHARGE OF ANY KIND WILL BE MADE IF NO MONEY IS COLLECTED AND NO SETTLEMENT WILL BE MADE WITHOUT THE CONSENT OF THE UNDERSIGNED.

I certify that ROBERT J. HEILGEIST has not directly or indirectly solicited this retainer and that he has not paid nor promised to pay any sum of money to the undersigned to induce him to employ ROBERT J. HEILGEIST. I further certify that ROBERT J. HEILGEIST has not loaned,

nor has he promised to loan, any financial assistance to the undersigned in return for retaining him in this matter.

Anthony J. Wentzel

Witness:

Dolores J. Pavelski

ROBERT J. HEILGEIST
ATTORNEY AND COUNSELOR

1317 Cedar Lake Road
Lake Villa, Illinois 60046
Telephone (312) 356-8316

12012 - 330th Avenue
Twin Lakes, Wisconsin 53181
Telephone (414) 877-3362

April 9, 1985

My client(s):
Anthony Wentzel
Date of Occurence:
9/14/81

Wilmot Union Community H.S.
Attn: Principal or Superintendent
Wilmot Wis.

Dear Sir:

My clients have retained me to file suit against you for the damages they sustained on the above date. I enclose my Statutory Notice of Attorney's Lien which sets forth the details.

For your own personal protection, I suggest you give the enclosed Attorney's Lien and this letter to your insurance company if you have insurance to protect yourself. If you do this, I can take

this matter up directly with them and will not trouble you any further.

If you are not covered by insurance in this matter, write me a note to that effect on the bottom of this letter, return it to me and I will not trouble you further.

However, please bear in mind that if I do not hear from you or your insurance company within a reasonable time, I will assume you intend to ignore this serious matter. In that case, my next notice to you will be a lawsuit. I trust this will not be necessary but that is up to you.

Respectfully,

Robert J. Heilgeist

Robert J. Heilgeist

RJH:ev
encl.

Under Illinois Laws of 1963

STATE OF ILLINOIS)
) SS
COUNTY OF LAKE)

YOU ARE HEREBY NOTIFIED that Anthony Wentzel has placed in my hands, as attorney, for suit or collection, a claim, demand, or cause of action against you growing out of your negligence in providing proper protective guard ware for students participating in violent sports, resulting in an accident which happened on or about the 14th day of Sept., 1981, and has agreed to pay me as a fee for my services a sum equal to one third (33 1/3%) percentum of whatever amount may be recovered therefrom by suit, settlement or otherwise, and that I claim a lien upon said claim, demand or cause of action for such fee.

THIS IS NOT A DEMAND UPON YOU FOR MONEY, but is served according to law for

my protection in the event you, of your own volition, elect to pay money to my client direct and not to deal with me in this matter.

ROBERT J. HEILGEIST
Attorney for Claimant(s)
1317 Cedar Lake Road
Lake Villa, Ill. 60046
Tel: (312) 356-8316

STATE OF ILLINOIS)
COUNTY OF LAKE) SS

Dolores C. Pavelski, being first duly sworn, deposes and says that she served the above notice upon Superintendent, Board of Attorneys Professional Responsibility by placing a true copy of same in an envelope addressed to said party at: Wilmot, Wis. with proper postage thereon, and depositing same in the U.S. Mail on the 9th day of April 1985.

Dolores C. Pavelski

STATE OF WISCONSIN IN SUPREME COURT

IN THE MATTER OF DISCIPLINARY PROCEEDINGS AGAINST:

AFFIDAVIT OF MAILING

ROBERT J. HEILGEIST,
Attorney at Law, Case No: 85-2014-D

Respondent.

STATE OF WISCONSIN)
) SS
WASHINGTON COUNTY)

KAREN K. KISSINGER, being first duly sworn on oath deposes and says that she is one of the secretaries for the Referee, William G. Bunk, in the above action; that on the 30th day of October, 1986, she deposited in the Post Office in the City of West Bend, Washington County, Wisconsin, and left there to be carried in the regular course of the mail, a copy of the FINDINGS OF FACT AND RECOMMENDATIONS securely enclosed in an envelope, the postage duly prepaid and

addressed to:

MR. JAMES WINIARSKI
3625 West Oklahoma Avenue
Milwaukee, WI 53215

MR. ROBERT J. HEILGEIST
1317 Cedar Lake Road
Lake Villa, Illinois 60046

_____
Karen K. Kissinger

Subscribed and sworn to before
me this 30th day of October, 1986.

_____
Notary Public, State of Wisconsin
My Commission: expires 5-22-88